



Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters

and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 14

NOVEMBER 19, 1980

No. 47

This issue contains

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ERRATUM

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80-265)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued May 23, 1980, to June 25, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was signed.

(DRA-1-09)

Dated: October 29, 1980.

GEORGE C. STEUART
(For Alfred G. Scholle, Director,
Carriers, Drawback and Bonds Division).

(A) Company: CPC International Inc.

Articles: Acid coconut oil, cochin (neutral) coconut oil, refined coconut oil (trademark Nucoline), blended refined coconut oil (trademark Filbisk).

Merchandise: Imported crude coconut oil.

Factory: Bayonne, N.J.

Statement signed: April 7, 1980.

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.

Rate issued by Regional Commissioner of Customs: New York,
June 2, 1980.

(B) Company: Coffee-Mate.

Articles: Automatic merchandising machines, Coffee machines and snack machines.

Merchandise: Imported line cord, radio interference filter, thermometer, and special formica.

Factory: Kenilworth, N.J.

Statement signed: May 21, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner Customs: New York, June 2, 1980.

(C) Company: Delmar Chemicals Ltd.

Articles: Chlordiazepoxide hydrochloride.

Merchandise: Imported chlordiazepoxide base.

Factory: Holley, N.Y.

Statement signed: February 19, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Boston, June 24, 1980.

(D) Company: Drexel Chemical Co.

Articles: Ethyl parathion 50 percent W/V (agricultural insecticide).

Merchandise: Imported ethyl parathion technical 98 percent.

Factory: Tunica, Miss.

Statement signed: January 11, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New Orleans, June 17, 1980.

(E) Company: General Electric Co.

Articles: Generators.

Merchandise: Imported and/or drawback slot armor, subslot covers and steel sections.

Factories: Lynn, Mass. and Durham, N.C.

Statement signed: June 2, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York, June 20, 1980.

(F) Company: Ideal Finishing, Inc.

Articles: Cut lace piece goods.

Merchandise: Imported dyed lace piece goods.

Factory: Fairview, N.J.

Statement signed: March 17, 1980.

Basis of claim: Used in, less valuable waste.

Rate issued by Regional Commissioner of Customs: New York,
June 2, 1980.

Revokes: T.D. 79-244-H.

(G) Company: International Veiling Corp.

Articles: Dyed lace piece goods.

Merchandise: Lace piece goods.

Factory: Clifton, N.J.

Statement signed: April 10, 1980.

Basis of claim: Used in, less valuable waste.

Rate issued by Regional Commissioner of Customs: New York, June 2, 1980.

Revokes: T.D. 79-234-L.

(H) Company: Andrew S. McCreath & Son, Inc.

Articles: Ferrochrome, crushed and sized.

Merchandise: Imported ferrochrome.

Factory: Baltimore, Md.

Statement signed: January 29, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York, June 2, 1980.

(I) Company: Marwais Steel Co.

Articles: Thermo-enamelled galvanized steel in sheet or coil.

Merchandise: Imported galvanized steel in sheet or coil.

Factory: Richmond, Calif.

Statement signed: March 20, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: San Francisco, June 6, 1980.

(J) Company: Medical Devices of Fall River, Inc.

Articles: Medical kits.

Merchandise: Imported glass syringes.

Factory: Fall River, Mass.

Statement signed: April 15, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Boston, June 9, 1980.

(K) Company: Mostek Corp.

Articles: Finished semiconductor devices.

Merchandise: Imported semiconductor subassemblies.

Factories: Colorado Springs, Colo. and Carrollton, Tex.

Statement signed: March 31, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: San Francisco, June 4, 1980.

(L) Company: National Papaya Co.

Articles: Bottled grape juice.

Merchandise: Imported bulk concentrate grape juice.

Factory: Odessa, Fla.

Statement signed: June 13, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Miami, June 20, 1980.

(M) Company: Plant City Steel Co.

Articles: LPG tanks.

Merchandise: Imported steel plate (A-455).

Factory: Jesup, Ga.

Statement signed: June 4, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Miami, June 17, 1980.

Revokes: T.D. 80-111-Q.

(N) Company: Schnacke-Grasso, Inc.

Articles: Refrigeration compressor units and systems.

Merchandise: Imported refrigeration compressors, valves, gauges, and suction filters.

Factory: Evansville, Ind.

Statement signed: April 29, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Chicago, May 30, 1980.

(O) Company: Seiko Time Corp.

Articles: Completed watches with bands or straps.

Merchandise: Imported watch heads.

Factory: El Segundo and Torrance, Calif.

Statement signed: March 17, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: Los Angeles, June 17, 1980.

(P) Company: The Singer Co.

Articles: Sewing machines and subassemblies thereof.

Merchandise: Imported and/or drawback mechanical and electrical components.

Factory: Anderson, S.C.

Statement signed: June 13, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York,
June 25, 1980.

(Q) Company: W. I. Skinner & Co., Inc.

Articles: Black fat tobacco.

Merchandise: Imported and/or drawback leaf tobacco.

Factory: Williamston, N.C.

Statement signed: March 25, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York,
June 20, 1980.

(R) Company: Syntex Laboratories, Inc.

Articles: Norminest tablets (0.5 mg).

Merchandise: Imported Norethindrone.

Factory: Palo Alto, Calif.

Statement signed: May 12, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: San Francisco,
June 4, 1980.

(S) Company: Transbas, Inc.

Articles: MCP/DMA amine formulation (herbicide).

Merchandise: Imported technical MCPA (herbicide ingredient—benzenoid chemical).

Factory: Billings, Mont.

Statement signed: February 13, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New Orleans,
June 17, 1980.

(T) Company: Union Carbide Corp.

Articles: Ferrochrome, crushed and sized.

Merchandise: Imported ferrochrome.

Factory: Baltimore, Md.

Statement signed: February 25, 1980.

Basis of claim: Appearing in.

Rate issued by Regional Commissioner of Customs: New York,
June 2, 1980.

(U) Company: Volvo Penta of America, Division of Volvo of America Corp.

Articles: Marine engines.

Merchandise: Imported marine engine parts.

Factory: Chesapeake, Va.

Statement signed: May 1, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: Baltimore,
May 23, 1980.

(V) Company: Wellman Industries Inc.

Articles: Wool or hair—sorted, graded, matched, sorted and graded, blended, scoured, carbonized, carded or combed (tops, preshrunk, blended and comb-waste (noils)).

Merchandise: Imported and/or drawback grease wool and scoured wool; hair of animals viz. camel, alpaca including llama and vicuna, cashmere goat, angora goat, and angora rabbit.

Factory: Johnsonville, S.C.

Statement signed: October 22, 1979.

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation, less valuable waste.

Rate issued by Regional Commissioner of Customs: New York,
June 2, 1980.

(W) Company: Western International Grain Services, Ltd.

Articles: Faba beans.

Merchandise: Imported faba bean seeds.

Factories: Various Montana farms.

Statement signed: April 2, 1980.

Basis of claim: Used in.

Rate issued by Regional Commissioner of Customs: New York,
May 30, 1980.

(X) Company: Westinghouse Electric Corp.

Articles: Steam turbine rotors.

Merchandise: Imported and/or drawback steam turbine rotor forgings, rough machined.

Factory: Lester, Pa.

Statement signed: February 21, 1980.

Basis of claim: Used in, less valuable waste.

Rate issued by Regional Commissioner of Customs: New York,
June 2, 1980.

(Y) Company: Westinghouse Electric Corp.

Articles: Steam turbine rotors, in cylinder.

Merchandise: Imported and/or drawback rotor forgings and rotor
disc forgings.

Factory: Charlotte, N.C.

Statement signed: February 20, 1980.

Basis of claim: Used in, less valuable waste.

Rate issued by Regional Commissioner of Customs: New York,
June 11, 1980.

(Z) Company: Yuba Heat Transfer Corp.

Articles: Pressure vessels.

Merchandise: Imported plate, forgings, and tubes.

Factory: Tulsa, Okla.

Statement signed: May 20, 1980.

Basis of claim: Used in, less valuable waste.

Rate issued by Regional Commissioner of Customs: Houston,
June 20, 1980.

(T.D. 80-266)

Bonds

Approval and discontinuance of carriers bonds, Customs form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: October 30, 1980.

| Name of principal and surety | Date of bond | Date of approval | Filed with district director/area director/amount |
|---|----------------|------------------|---|
| A-P-A Transport Corp., 2100 88th St., North Bergen, NJ; motor carrier; American Motorists Insurance Co. | Aug. 22, 1980 | Sept. 16, 1980 | Newark, NJ \$50,000 |
| Air Cargo Transit, Inc., 1311 S. 27th St., Phoenix, AZ; motor carrier; The Hanover Insurance Co. | Sept. 9, 1980 | Sept. 16, 1980 | Nogales, AZ \$25,000 |
| Albury and Company, Dodge Island, Port of Miami, P.O. Box 014221, Miami, Fla.; motor carrier; Washington International Ins. Co. | Aug. 27, 1980 | Sept. 18, 1980 | Miami, FL \$25,000 |
| Arrow Transportation Co., Inc., 167 Perry St., New York, NY; motor carrier; Peerless Ins. Co. D 8/29/80 | Oct. 22, 1975 | Oct. 22, 1975 | New York Seaport \$25,000 |
| Consolidated Transfer & Warehouse Co., Inc., Taney & Levee Rd., N. Kansas City, MO; motor carrier; Fidelity & Deposit Co. | Sept. 2, 1980 | Sept. 24, 1980 | Houston, TX \$25,000 |
| Adan J. Dominguez, dba Dominguez Brothers Trucking Co., 1500 So. Zarzamora, San Antonio, TX; motor carrier; National Surety Corp. | Jan. 15, 1980 | Sept. 25, 1980 | Laredo, TX \$25,000 |
| Duo Trucking Corp., 901 Castle Rd., Secaucus, NJ; motor carrier; Peerless Ins. Co. | Sept. 8, 1980 | Oct. 3, 1980 | Newark, NJ \$50,000 |
| Garfield Transportation Systems, Inc., 300 Canal Bank Rd., Ville St. Pierre, Quebec, Canada H8R 1H3; motor carrier; The Continental Insurance Co. | Mar. 10, 1980 | Sept. 24, 1980 | Ogdensburg, NY \$50,000 |
| Jet Line Service, Inc., 460 Riverside Industrial Parkway, Portland, ME; motor carrier; Hartford Accident and Indemnity Co. | May 21, 1980 | Oct. 1, 1980 | Portland, ME \$25,000 |
| Kipling Weldon Castileberry dba KASKO, 3310 Bobbie Lane, Garland, TX; motor carrier; St. Paul Fire & Marine Ins. Co. | Sept. 18, 1980 | Oct. 2, 1980 | Dallas/Fort Worth, TX \$25,000 |
| Merce Brothers Trucking Co., P.O. Box 952, Wilson, NC; motor carrier; United States Fire Insurance Co. (PB 3/4/77) D 9/22/80 | Sept. 12, 1980 | Sept. 23, 1980 | Wilmington, NC \$25,000 |
| Mitel of Delaware, Inc., 1498 N.W. 3rd St., Deerfield Beach, Fla., motor carrier; Fidelity & Deposit Co. of MD | July 28, 1980 | Sept. 25, 1980 | St. Albans, VT \$25,000 |
| Oak Harbor Freight Lines, Inc., 6350 S. 143rd, Seattle, WA; motor carrier; Safeco Ins. Co. of America (PB 5/10/72) D 9/12/80 | Sept. 9, 1980 | Sept. 12, 1980 | Seattle, WA \$25,000 |
| Shipper Imperial, Inc., P.O.B. 5790, San Jose, Calif., motor carrier; Peerless Ins. Co. D 9/26/80 | Oct. 19, 1972 | May 1, 1973 | San Francisco, CA \$65,000 |
| Sulli-Van Lines, Inc., 43 Cortland, Highland Park, MI; motor carrier; Firemen's Ins. Co. of Newark, NJ | Sept. 19, 1980 | Oct. 1, 1980 | Newark, NJ \$50,000 |
| Sullivan Trucking Co., Inc., P.O. Box 2164, 1/4 mile S. of Jet 156 & 60, Ponca City, OK; motor carrier; Hartford Accident & Indemnity Co. | Nov. 29, 1979 | Oct. 7, 1980 | Dallas/Fort Worth, TX \$25,000 |

See footnotes at end of table.

| Name of principal and surety | Date of bond | Date of approval | Filed with district director/area director/amount |
|--|----------------|------------------|---|
| David Tesone Trucking, Inc., Box 35, Wildwood, PA; motor carrier; The American Ins. Co. D 10/13/80 | Sept. 15, 1978 | Sept. 18, 1978 | Philadelphia, PA \$25,000 |
| World International Freight Forwarders, Inc., P.O. Box 20013—New Orleans Int'l Airport, New Orleans, La; Freight Forwarders; Old Republic Ins. Co. | Oct. 2, 1980 | Oct. 2, 1980 | New Orleans, LA \$50,000 |
| Mr. Harry G. Zimmerman, Allstate Distributors, 808 Beltree St., Dunedin, Fla.; motor carrier; Aetna Ins. Co. D 11/15/79 | Oct. 25, 1977 | Oct. 25, 1977 | Tampa, Fla. \$25,000 |

¹ Surety is United States Fidelity & Guaranty Co.

² Principal is Gus VanderPol and Henry VanderPol d.b.a. Oak Harbor Freight Lines; Surety is Fidelity & Deposit Co. of Maryland.

BON-3-03

GEORGE C. STEUART
(For Alfred G. Scholle, Director
Carriers, Drawback and Bonds Division).

(T.D. 80-267)

Drawback Contract (Rate)

There follows an approved drawback contract (rate). Anyone who can comply with the conditions of the contract may adhere to it by notifying a Regional Commissioner of Customs in writing of the intention to do so and providing him with the following information:

1. Name and address of adherent;
2. Factories which will operate under the contract;
3. If a corporation, the names of officers or persons with power of attorney who will sign drawback documents on behalf of adherent.

This contract is designed to simplify drawback procedures for certain common manufacturing operations. It of course does not preclude or limit the use of individual contracts.

Dated: October 31, 1980.

GEORGE C. STEUART
(For Alfred G. Scholle, Director,
Carriers, Drawback and Bonds Division).

DRAWBACK CONTRACT UNDER 19 U.S.C. 1313(b), FINISHING PROC-
ESSES FOR DESIGNATED GREIGE PIECE GOODS

Imported merchandise or draw-back products to be designated as the basis for the allowance of drawback on the exported products

Greige piece goods.

The goods which we propose to use in manufacture will be the same kind and quality as the goods which we will designate as the basis of claim for drawback, and are used interchangeably by us without change in manufacturing processes or resultant products, byproducts, or wastes.

We do ask that some tolerances between imported-designated goods and the used-exported goods be permitted to accommodate variations which are normally found in greige piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for goods of the same kind and quality:

(1) We propose that there be allowed a 4-percent weight tolerance, and the greige goods which we propose to use in manufacture will be not more than 4-percent lighter or heavier than the imported greige goods which will be designated;

(2) We propose that there be allowed a tolerance of 4-percent in the aggregate thread count per square inch, and the greige goods we propose to use in manufacture will have an aggregate thread count within 4 percent, more or less of the aggregate thread count of the imported greige goods which will be designated.

In each case, the average yarn number of the domestic goods will be the same or greater than the average yarn number of the imported goods which we propose to designate, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, i.e. print cloth for print cloth, gingham for gingham, etc.

The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65 percent cotton and 35 percent dacron will be designated against the use of piece goods shown to contain 65 percent cotton and 35 percent dacron. The actual fiber composition may vary slightly from that described on the invoice on other acceptance of the fabric as having the composition described or documents in accordance with trade practices.

It is further understood and agreed that the substituted greige goods which we use in the manufacture of articles for exportation

Duty-paid, duty-free, or domestic merchandise of the same kind and quality as that designated which will be used in the manufacture of the exported products

Greige piece goods.

with benefit of drawback will be so similar in quality to the imported greige goods which we will designate for the basis of allowance of drawback, that the greige goods used, if it had been imported, would have been subject to the same or greater amount of duty as was paid on the imported designated greige goods. We understand, however, that differences in value resulting from the factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

Finished piece goods.

GENERAL STATEMENT

We process greige piece goods for our own account. We may process piece goods for the account of another producer or another producer may process piece goods for our account under contract within the principal and agency relationship outlined in T.D. 55027(2) and 55207(1).

PRODUCTION

Greige piece goods are subjected to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

MULTIPLE PRODUCTS—RELATIVE VALUES

Not applicable.

WASTE

Rag waste may be incurred in our operations. Our records shall show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it shall be assumed in liquidation that such rag waste constituted 2 percent of the piece goods put into the finishing processes.

SHRINKAGE, GAIN, AND SPOILAGE

Our records shall show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any.

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;
2. The quantity of merchandise of the same kind and quality as the designated merchandise we used to produce the exported articles;
3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced the exported articles.

We realize that to obtain drawback we must establish that the completed articles were exported within 5 years after the importation of the imported merchandise.

Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance with title 19, United States Code, section 1313(b), and part 22 of the Customs Regulations.

INVENTORY PROCEDURES

Our inventory procedures will show how we will satisfy the legal requirements discussed under the heading "Procedures and Records Maintained." We understand that if our records do not show that we satisfy those legal requirements, drawback cannot be paid.

BASIS OF CLAIM FOR DRAWBACK

Claims for drawback will be based on the quantity of greige piece goods used to produce the finished piece goods for export less the value of rag waste, the quantity of remnants, and spoilage, if any.

Proper allowance will be made for any shrinkage or stretching.

AGREEMENTS

The corporation specifically agrees that it will:

1. Comply fully with the terms of this statement when claiming drawback;
2. Open its factory and records for examination at all reasonable hours be authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this statement;
4. Keep this statement current by reporting promptly to the regional commissioner who liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, or the corporate organization by succession or reincorporation;

5. Keep a copy of this statement on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this statement; and,

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313(b), part 22 of the Customs Regulations and this statement.

(T.D. 80-268)

Effective Date of Revocation of Customhouse Cartman's License No. 168 Issued to Di Jub Leasing Corp.

By T.D. 80-252, dated October 7, 1980 (45 F.R. 69337, Oct. 20, 1980), the Commissioner of Customs revoked customhouse cartman's license No. 168. The effective date of the revocation should have read "October 28, 1980." Pursuant to a request on behalf of the Di Jub Leasing Corp., the effective date is amended to November 12, 1980.

Dated: October 28, 1980.

WILLIAM T. ARCHEY
(For Commissioner of Customs).

[Published in the Federal Register, Nov. 6, 1980 (45 F.R. 73847)]

(T.D. 80-269)

R.B.K. Importers, Inc.

Notice of recordation of trade name

On August 14, 1980, there was published in the Federal Register (45 F.R. 54173) a notice of application for the recordation under section 42 of the act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name R.B.K. Importers, Inc. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application. The name "R.B.K. Importers, Inc." is hereby recorded as the trade name of R.B.K. Importers, Inc., a corporation organized under the laws of the State of Delaware, located at 940 South Alameda Street, Los Angeles, Calif. 90021, when applied to women's wearing apparel and sportswear including but not limited to sweaters, skirts, tops, jackets, shirts, jeans and slacks, manufactured in Macau, Korea,

Taiwan, Hong Kong, China, Japan, Italy, and Greece. No foreign firms are authorized to use the trade name.

Dated: November 5, 1980.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

[Published in the Federal Register, Nov. 10, 1980 (45 F.R. 74608)]

(T.D. 80-270)

Donnkenny, Inc.

Notice of recordation of trade name

On August 14, 1980, there was published in the Federal Register (45 F.R. 54173) a notice of application for the recordation under section 42 of the act of July 15, 1946, as amended (15 U.S.C. 1124), of the trade name Donnkenny, Inc. The notice advised that prior to final action on the application, filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), consideration would be given to relevant date, views, or arguments submitted in opposition to the recordation and received not later than 30 days from the date of publication of the notice. No responses were received in opposition to the application.

The name "Donnkenny, Inc." is hereby recorded as the trade name of Donnkenny, Inc., a corporation organized under the laws of the State of Delaware, located at 1411 Broadway, New York, N.Y. 10018, when applied to women's wearing apparel and sportswear including but not limited to sweaters, skirts, tops, jackets, shirts, jeans, and slacks, manufactured in Macau, Korea, Taiwan, Hong Kong, China, and Japan. No foreign firm is authorized to use the trade name.

Dated: November 5, 1980.

DONALD W. LEWIS,
Director,
Office of Regulations and Rulings.

[Published in the Federal Register, Nov. 10, 1980 (45 F.R. 74608)]

ERRATUM

In CUSTOMS BULLETIN, volume 14, No. 42, dated October 15, 1980, in T.D. 80-241, on page 4, delete the information concerning Hardwicke's Ammex Ltd. from the list.

In CUSTOMS BULLETIN, volume 14, No. 43, dated October 22, 1980, in T.D. 80-249, under Finland the value should be .273187 instead of .273197.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1254)

WESTWAY TRADING CORPORATION *v.* THE UNITED STATES, No. 80-9

1. CLASSIFICATION OF IMPORTS—SUGAR—DUTY EXEMPTION— PRESIDENTIAL PROCLAMATION

Appeal from the judgment of the United States Customs Court, — Cust. Ct. —, C.D. 4826, 483 F. Supp. 300 (1979), which granted the Government's cross-motion for summary judgment and sustained its position that sugar imported into the United States by appellant was not exempt from increased duty under item 155.20, TSUS, under Presidential Proclamation 4466 issued October 4, 1976, which modified Presidential Proclamation 4463 issued September 21, 1976. Affirmed.

2. PRESUMPTION OF CORRECTNESS

A presumption of correctness attaches to the decision of the Secretary of the Treasury or his delegate.

3. DATE OF EXPORTATION

"Date of exportation" has been uniformly interpreted in court decisions and regulations to mean the date on which merchandise finally leaves the country of exportation, regardless of departures from intermediate ports.

4. *Id.*

More recent interpretation by Commissioner of Customs of "exported to the United States before" a certain date, rather than earlier interpretation of "exported to the United States on or after" a certain date, would have been intended by the President in promulgating Presidential Proclamation 4466.

5. BURDEN OF PROOF

Appellant failed to carry its burden of proving that the involved sugar was exempt from increased duty.

U.S. Court of Customs and Patent Appeals, October 30, 1980

Appeal from U.S. Customs Court, C.D. 4826

[Affirmed.]

Murray Sklaroff, attorney of record for appellant

Alice Daniel, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation, *Saul Davis*, Commercial Litigation Branch, attorneys of record for appellee.

[Oral argument on October 6, 1980 by Murray Sklaroff for appellant and by Saul Davis for appellee.]

Before MARKEY, Chief Judge, RICH, BALDWIN, MILLER, and NIES, Associate Judges.

MILLER, Judge.

This is an [1] appeal from the judgment of the U.S. Customs Court, — Cust. Ct. —, C.D. 4826, 483 F. Supp. 300 (1979), granting the Government's cross-motion for summary judgment and sustaining its position that sugar imported into the United States by appellant was not exempt from increased duty under item 155.20, TSUS, under Presidential Proclamation 4466 (PP 4466) issued October 4, 1976, which modified Presidential Proclamation 4463 (PP 4463) issued September 21, 1976. We affirm.

BACKGROUND

Increased duty on sugar imported by Westway Trading Corp. (Westway) was assessed by the Customs Service under PP 4463.¹ Westway claims that its sugar was exempt under PP 4466² from the increase. The sugar in question was laded at the port of Salaverry, Peru. The ship departed Salaverry on September 18, 1976, and proceeded to Pimental, Peru, from which it departed for the United States on October 5, 1976. On September 21, 1976, PP 4463 was issued increasing the duty on sugar imported into the United States. However, on October 4, 1976, PP 4466 was issued amending PP 4463 by exempting sugar "exported to the United States before 12:01 a.m. * * * September 21, 1976."

¹ 41 F.R. 41681 (1976). PP 4463 provides:

B. The rates of duty in rate column numbered 1 for items 155.20 and 155.30 of Subpart A, Part 10, Schedule 1 of the TSUS, are modified, and the following rates are established:
155.20..... 1.9875¢ per lb. less 0.028125¢ per lb. for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 1.284375¢ per lb.
155.30..... Dutiable on total sugars at the rate per lb. applicable under Item 155.20 to sugar testing 100 degrees.

C. The provisions of this proclamation shall become effective * * * on and after the date of this proclamation and shall remain in effect until the President otherwise proclaims or until otherwise superseded by law.

² 41 F.R. 44031 (1976); PP 4466 provides:

Now, therefore, I, Gerald R. Ford, President of the United States of America, * * * [in order to alleviate hardships which may result from increasing the rate of duty with respect to certain goods that were exported prior to the effective date of PP 4463] do hereby proclaim that paragraph C of Proclamation No. 4463 of September 21, 1976, is hereby amended to read as follows:

C. * * * [The provisions of this proclamation shall not be effective with respect to articles exported to the United States before 12:01 a.m. (U.S. eastern daylight savings time), September 21, 1976. * * * (Italic supplied.)

The Customs Court held that Westway failed to rebut the presumption of correctness attaching to the determination of the District Director of Customs. It stated that by use of the phrase "exported to the United States" the President intended that "exported" be construed as the final act of departing the country of exportation. It based this conclusion on instructions issued on January 24, 1972, by telegram from the Commissioner of Customs (Commissioner)³ interpreting additional duty order No. 4 (ADO-4)⁴ and on prior decisions and regulations⁵ interpreting the phrase "date of exportation" in customs valuation cases.

OPINION

Appellant contends that the sugar laded at Salaverry was exported on the date that it left that port and bases its contention on Presidential Proclamation 4074 (PP 4074),⁶ as modified by additional duty

³ The Commissioner's telegram of Jan. 24, 1972, stated:

To all Regional Commissioners, Regional Directors of Security and Audit, and District Directors of Customs
Rebutel January 18, 1972, concerning additional duty order No. 4, the date of exportation of articles exported to the United States on or after October 1, 1971, will be determined in accordance with section 14.3(d) Customs Regulations, including footnote No. 5. You will not repeat not use method authorized in Butel September 3, 1971, for shipments by vessel where goods were laden at multiple ports within a single country.

⁴ 37 F.R. 887 (1971). ADO-4 provides:

Articles Exempt from Additional Duty Imposed Under Subpart C of Part 2 of the Appendix to the Tariff Schedules of the United States

*** I hereby determine that it is consistent with safeguarding the balance of payments position of the United States to establish exemptions from the additional duty provided for in subpart C as set forth in Headnote 5 thereof, which I hereby amend as follows:

A new paragraph, designated as paragraph (1), is added reading as follows:

(1) Articles exported to the United States on or after October 1, 1971, irrespective of country of origin, which are described in the textile and apparel categories for wool and man-made fibers published in a notice in the Federal Register ***.

⁵ 19 CFR 152.1 (1979) provides:

(C) *Date of exportation.* "Date of exportation," or the "time of exportation," referred to in sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a and 1402), means the actual date merchandise finally leaves the country of exportation for the United States.

The predecessor to 19 CFR 152.1(c) was 19 CFR 14.3 (1972), which provided:

(b) The time of exportation referred to in section 402 and section 402a of the tariff act, as amended, is the date on which the merchandise actually leaves the country of exportation for the United States.⁷

⁶ If the merchandise is shipped directly by water from the country of export, the date of the sailing of the vessel is the date of exportation. Since the act of exportation is not complete until the merchandise finally leaves the jurisdiction of the exporting country, if a vessel with merchandise on board sails from two or more ports, *** of the exporting country, *** the date the vessel on which the merchandise finally leaves the exporting country sails from the last port thereof is the date of exportation. ***

⁷ 36 F.R. 15724 (1971). FP 4074 provides:

Now, Therefore, I, Richard Nixon, President of the United States of America, *** [to assure our security by enhancing our international competitive position and to bolster our balance of payments position] do proclaim as follows:

(2) [Prior Presidential] proclamations are suspended only insofar as is required to assess a surcharge in the form of a supplemental duty amounting to 10 percent ad valorem. Such supplemental duty shall be imposed on all dutiable articles imported into the customs territory of the United States from outside thereof, which are entered, or withdrawn from warehouse, for consumption after 12:01 a.m., Aug. 16, 1971. ***

Subpart C—Temporary Modifications for Balance of Payments Purposes

Subpart C headnotes:

2. *Additional duties imposed.*—*** The provisions for these duties are effective with respect to articles entered on and after 12:01 a.m., Aug. 16, 1971, and shall continue in effect until modified or terminated by the President or by the Secretary of the Treasury ***.

order No. 3 (ADO-3),⁷ and a Commissioner's telegram of September 3, 1971.⁸ It argues that the language "exported to the United States before" a certain date is common to both PP 4074 (as modified by ADO-3) and PP 4466, which was adopted for the purpose of alleviating hardships to importers;⁹ that, historically, such language has only been used twice and must have been intended to have the same meaning in both instances. Appellant also asserts that prior decisions interpreting the phrase "date of exportation" involved valuation cases and were unrelated to an expressed desire of the President to alleviate hardship.

The Government adopts the rationale of the Customs Court, relying on the Commissioner's telegram of January 24, 1972, interpreting ADO-4, and customs regulations and decisions interpreting "date of exportation." It underscores the fact that ADO-4 and the Commissioner's interpreting telegram of January 24, 1972, were later in time than ADO-3 and the interpreting telegram of September 3, 1971. It argues that the President would have been aware of the conflict between the interpretations of ADO-3 and ADO-4 and that, in using the language "exported to the United States," he intended the Commissioner's most recent interpretation to apply.

The decisive issue is whether Westway has carried its burden of proving that the determination of the District Director of Customs was not correct. [2] A presumption of correctness attaches to the decision of the Secretary of the Treasury or his delegate, who, in this case, was the District Director of Customs, 28 U.S.C. 2635(a) (1970); *United States v. Hugo Stinnes Steel & Metals Co.*, 66 CCPA —, —, C.A.D. 1226, 599 F. 2d 1037, 1042 (1979). The only evidence of Presidential intent cited by Westway is the earlier and unrepeatable

⁷ 36 F.R. 17667 (1971). ADO-3 provides:

Articles Exempt from Additional Duty Imported under Subpart C of Part 2 of the Appendix to the Tariff Schedules of the United States

* * * I hereby determine that it is consistent with safeguarding the balance of payments position of the United States to establish exemptions from the additional duty provided for in subpart C as set forth in headnote 5 thereof which I hereby amend to add the following:

(h) Articles exported to the United States before 12:01 a.m., Aug. 16, 1971, provided that any such article entered for warehouse or placed in foreign trade zone shall be exempt only if withdrawn from warehouse for consumption or entered or withdrawn for consumption from a foreign trade zone under a request properly filed on or before Oct. 1, 1971.

⁸ The Commissioner's telegram of Sept. 3, 1971, stated:

All Regional Commissioners and District Directors of Customs

In Presidential Proclamation 4074 of August 15, 1971, and Treasury Department additional duty orders issued under that proclamation, 12:01 a.m. means 12:01 a.m. U.S. eastern daylight savings time.

For the purpose of determining the date of exportation under the provisions of headnote 5(h) subpart C of part 2 of the appendix to TSUS, the rules set forth below shall be followed:

Where goods are exported from the country of exportation by vessel, and where the vessel lades merchandise at 2 or more ports within that country, the date of exportation for each of the shipments shall be the date upon which the shipment left the port at which it was laden. . . .

⁹ The Customs Service indicated that one of the purposes underlying PP 4074 as modified by ADO-3 was "to alleviate a widespread financial hardship to importers whose merchandise had been exported [to the United States] before the surcharge was imposed and thus had no advance notice of the additional duties." PP 4466 expressly states that one of its purposes is "to alleviate hardships which may result from increasing the rate of duty with respect to certain goods that were exported [to the United States] prior to the effective date of [PP 4466]."

interpretation of "date of exportation" contained in the September 3, 1971, telegram issued by the Commissioner of Customs. [3] All court decisions, regulations, and the more recent Commissioner's telegram have uniformly interpreted "date of exportation" to mean the date on which merchandise in issue finally leaves the country of exportation, regardless of departures from intermediate ports.

[4] It was reasonable for the District Director of Customs to infer that the President would have been aware that the Commissioner's September 3, 1971, telegram interpreting "exported to the United States before" a certain date in ADO-3 was unique and that the case law,¹⁰ Customs regulations,¹¹ and the Commissioner's more recent telegram interpreting "exported to the United States on or after" a certain date in ADO-4 were inconsistent with that interpretation. Also, we note that the telegram interpreting ADO-4 expressly directed that the method authorized in the telegram of September 3, 1971, for determining date of exportation for shipments where goods are laded at multiple ports within a single country was not to be followed. Accordingly, we conclude that the interpretation given ADO-4, and not that given ADO-3, would have been intended by the President when he promulgated PP 4466.

[5] In view of the foregoing, we hold that Westway failed to carry its burden of proving that the involved sugar was exempt under Presidential Proclamation 4466 from increased duty.

The judgment of the Customs Court is *affirmed*.

¹⁰ Since the decision in *Froman v. Peaslee*, 9 Fed. Cas. 452 (1857), the courts have consistently determined that merchandise is exported to the United States upon departing from the last port in the jurisdiction of the exporting country. See *D.N. & E. Walter & Co. v. United States*, 42 CCPA 114, C.A.D. 582 (1955); *Arakian Bros., Inc. v. United States*, 41 CCPA 80 C.A.D. 532 (1953). The fact that the cited cases dealt with the determination of "value" does not preclude reference to their interpretation of "exported." In each instance the court is concerned with the definition of a term consistently used in customs law. In addition, this court has approved adopting definitions by analogy to other areas of Customs law when necessary to define a term found in a Presidential proclamation. *United States v. Hugo Stinnes Steel & Metals Co.*, *supra*.

¹¹ See note 5, *supra*.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao

James L. Watson

Morgan Ford

Herbert N. Maletz

Scovel Richardson

Bernard Newman

Frederick Landis

Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Rules Decision

(C.R.D. 80-18)

ATLANTIC SUGAR, LTD., ET AL., PLAINTIFFS, v. THE UNITED STATES,
DEFENDANT, AMSTAR CORPORATION, INTERVENOR

*Memorandum Opinion and Order on Intervenor Amstar's Motion for
Access to Documents*

Court No. 80-5-00754

(Dated October 21, 1980)

WATSON, Judge: This is an action under 19 U.S.C. 1516a(a)(2) challenging the determination by the International Trade Commission that importations of sugar from Canada were causing material injury

to an industry in the United States. Intervenor Amstar, a domestic producer of sugar and the initiator of the administrative proceeding, now moves for access to confidential documents from that proceeding to which the plaintiffs were previously granted access by the court. *Atlantic Sugar Ltd., et al. v. United States*, 85 Cust. Ct. —, C.R.D. 80-10, modification and stay denied, 85 Cust. Ct. —, C.R.D. 80-14.

Plaintiffs have not responded and the defendant United States objects only to the inclusion of Amstar's in-house counsel in the proposed order.

The court is of the opinion that in actions such as these the confidential business information of business competitors should not be disclosed to in-house counsel unless a party has no other reasonable way of adequately preparing and presenting its arguments. This preference is not based on any reservation as to the integrity of in-house counsel but is intended to avoid placing them under the unnatural and unremitting strain of having to exercise constant self-censorship in their normal working relations.

It is therefore,

ORDERED, that Amstar's motion be granted only to the extent that its independent counsel shall be granted access to document Nos. 2, 3, 9, 10, 11, 25, 42, 45, 49, 50, 52, 56, 57, and 61 on list No. 2 under the terms of the court's order of September 12, 1980 and it is further

ORDERED, that the above-listed documents shall be made available for examination and copying by those granted access hereunder at the office of the Clerk of the Court or the office of the International Trade Commission for the 30-day period commencing on the date of entry of this order.

Appeal to U.S. Court of Customs and Patent Appeals

Appeal 81-3.—United States *v.* Arnold Pickle & Olive Co.—CUCUMBERS IN BRINE—PACKING COSTS—EXPORT VALUE.—Appeal from C.D. 4868.

The merchandise in this case, cucumbers packed in brine exported from Mexico, is subject to appraisement on the basis of export value as defined in section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956. On plaintiff-appellee's motion for partial summary judgment and defendant-appellant's motion for judgment on the pleading before the Customs Court, the court held that the appraisement was erroneous and that the prices at which the independent farmers in the principal markets of Mexico, at the times of exportation of the merchandise in issue, freely offered such merchandise in the usual wholesale quantities and in the ordinary course of trade for exportation to the United States were prices which constituted an export value for the cucumbers, exclusive of the cost of their packing. Plaintiff was granted partial summary judgment, and defendant's motion for judgment on the pleadings was denied. *Arnold Pickle & Olive Co. v. United States*, 79 Cust. Ct. 50, C.D. 4712 (1977).

The trial in this case was limited to the question of the costs of packing the cucumbers for shipment to the United States. The Customs Court held that plaintiff had proven the packing costs by a preponderance of the evidence; that the testimony of plaintiff's witnesses was sufficient to prove the costs of labor, supervision, salt, ice, grading machinery, and scales, as well as the free availability of well water; and that the cost of packing for each truckload entry was \$43.56210 plus, for those entries in which ice was used, the cost of ice set out in plaintiff's exhibit 17.

It is claimed that the Customs Court erred in entering judgment for plaintiff, appellee, rather than entering judgment for defendant, appellant, dismissing the consolidated civil action; in finding and holding that the merchandise in issue, cucumbers packed in brine, is properly dutiable on the basis of export value, section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956,

at the price of fresh cucumbers sold by Mexican growers to the exporter plus the costs of readying and packing the cucumbers for exportation to the United States; in not finding and holding that the merchandise in issue was properly appraised on the basis of export value, as defined, *supra*, and that the appraised values were correct; in finding and holding that the merchandise undergoing appraisement was the basic article, cucumbers, plus packing, which consisted of placing those cucumbers in brine; in not finding and holding that the merchandise undergoing appraisement was cucumbers packed in brine; in finding and holding that the plaintiff, appellee herein, overcame its dual burden of proof; in not finding and holding that appellee failed to prove the export value of the merchandise; in not finding and holding that the condition in which the merchandise arrived in this country, i.e., cucumbers packed in brine, should be the basis of determining the dutiable value of the merchandise; in not dismissing this action on the basis of collateral estoppel by virtue of the decision in *Arnold Pickle & Olive Co. v. United States*, 75 Cust. Ct. 154, C.D. 4620 (1975).

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the **CUSTOMS BULLETIN**, through July 2, 1980, are available in microfiche format at a cost of \$23.85 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: October 31, 1980.

JOHN T. ROTH,
Acting Director,
Regulations and Research Division.

| Date of decision | File No. | Issue |
|------------------|----------|--|
| 10- 8-80 | 104420 | Vessel repair: Dutiability of foreign repairs performed under warranty |
| 10- 2-80 | 104772 | Vessels: Dutiability of foreign-built hovercraft and speedboats |

| Date of decision | File No. | Issue |
|------------------|----------|---|
| 10-10-80 | 104787 | Carrier control: Instances in which Customs has imposed forfeitures on foreign salvors for violations of 46 U.S.C. 316(d) |
| 10- 2-80 | 104873 | Carrier control: Application of coastwise law to the movement of a foreign storage vessel from its permanent station, for safety purposes, during the transfer Alaskan oil |
| 10- 7-80 | 104878 | Carrier control: Towing by foreign vessels between U.S. ports of domestic water craft which are unfit for their intended service |
| 9-24-80 | 104888 | Vessels: Exemption from payment of special tonnage tax and light money of vessels from the People's Republic of China |
| 10- 1-80 | 104889 | Carrier control: Whether a vessel which transports merchandise from one U.S. port to another and there unloads the merchandise for processing, to be reladen on board the same vessel for transportation foreign, is in the coastwise trade |
| 10- 3-80 | 104898 | Carrier control: Waiver of penalty in coastwise law violation case due to circumstances of hurricane |
| 10-10-80 | 104908 | Vessels: Exemption from payment of special tonnage tax and light money of vessels from the People's Republic of China |
| 10-15-80 | 104917 | Carrier control: Whether the use of a foreign-flag vessel to conduct research in U.S. waters is a use in coastwise trade |
| 10-20-80 | 712519 | Prohibited and restricted imports: Whether certain articles of wearing apparel, assembled by inmates of a Mexican prison from components of U.S. origin, are prohibited from entering the United States under 19 U.S.C. 1307 |
| 10- 7-80 | 713438 | Country-of-origin marking: Paperboard coin holders imported with commemorative coins minted in the United States |
| 3-18-80 | 060576 | Classification: Naphtha solvents (403.90, 475.35) |
| 2-19-80 | 060869 | Classification: Insect repellent (403.60, 405.15) |
| 10- 3-80 | 062773 | Classification: Medallion (740.10, 740.38) |
| 7-11-80 | 062986 | Classification: Chocolate powder mix (183.05) |
| 8-29-80 | 062987 | Classification: Printed materials (270.25, 270.85, 274.75) |
| 9-15-80 | 064445 | Classification: Cheesecloth wipes (366.27, 385.30, 386.50) |
| 10- 9-80 | 064484 | Classification: Plastic bank (772.15) |
| 9- 7-80 | 064723 | Classification: Surgical scissors (650.92, 709.27) |
| 10- 9-80 | 064885 | Classification: Cosmetic emulsion preservative (409.00, 413.51) |
| 10- 9-80 | 064997 | Classification: Eye stay for athletic footwear (386.50, 389.62, 657.25, 774.50) |
| 10- 3-80 | 065265 | Classification: Beachcomber sandals (700.60) |
| 10- 2-80 | 065364 | Classification: Horseshoe magnets (682.70, 737.95) |
| 10- 1-80 | 065386 | Classification: Plastic tubing (771.43, 771.55) |
| 6-29-80 | 066015 | Classification: Aprons (382.33, 772.30) |

| Date of decision | File No. | Issue |
|------------------|----------|--|
| 10- 3-80 | 066019 | Classification: Automobile antitheft device (657.25, 657.40, 646.92, 692.32) |
| 9-16-80 | 066047 | Classification: Plastic tubing (771.55, 772.65) |
| 9- 3-80 | 066129 | Classification: Jackets (380.84) |
| 10- 8-80 | 066229 | Classification: Sheepskin buff pad (791.19) |
| 9-16-80 | 066257 | Classification: Bagging machine (662.20) |
| 10- 2-80 | 066355 | Classification: Cutting tools (649.43, 649.46) |
| 10- 9-80 | 066387 | Classification: Cyclic organic chemicals (404.46) |

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, November 13, 1980.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

In the Matter of
CERTAIN CATHODE SPUTTER
COATED GLASS TRANSPAR- }
ENCIES } Investigation No. 337-TA-79

Notice of Termination

AGENCY: U.S. International Trade Commission.

ACTION: Termination of Investigation No. 337-TA-79, Certain Cathode Sputter Coated Glass Transparencies.

SUMMARY: The parties to this investigation have filed a joint motion to terminate based upon a settlement agreement. After reviewing the record, including comments from interested Federal agencies and private parties, the Commission has terminated this investigation.

SUPPLEMENTARY INFORMATION: In connection with the Commission's investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) of alleged unfair methods of competition and unfair acts in the importation or sale of certain cathode sputter coated glass transparencies in the United States, the complainant, the respondents, and the Commission investigative attorney filed a motion on April 25, 1980 (motion No. 79-2), to terminate this investigation on the basis of a settlement agreement.

On May 28, 1980, the administrative law judge filed her recommendation that the motion be granted. Notice of the pendency of the motion to terminate and the general nature of the settlement agreement were published in the Federal Register on July 21, 1980 (45 CFR 48751).

RECONSIDERATION: Any party wishing to petition for reconsideration of the Commission's action must do so within 14 days of service of the Commission action and order. Such petitions must be in accord with Commission rule 210.56 (19 CFR 210.56).

PUBLIC ACCESS TO RECORD: Copies of the Commission's action and order, and any other public document in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202-523-0480.

By order of the Commission.

Issued: October 22, 1980.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN COIN-OPERATED AUDIO
VISUAL GAMES AND COMPONENTS }
THE THEREOF } Investigation No. 337-TA-87

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference will be held in this case at 9 a.m. on November 18, 1980, in the Dodge Center, room 201, 1010 Wisconsin Avenue NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: October 24, 1980.

JANET D. SAXON,
Administrative Law Judge.

In the Matter of
CERTAIN COMPUTER FORMS FEEDING
TRACTORS AND COMPONENTS
THEREOF } Investigation No. 337-TA-77

*Notice of Commission Request for Comments Regarding Settlement
Agreement*

AGENCY: U.S. International Trade Commission.

ACTION: Request for comments from the public regarding proposed settlement agreement.

SUMMARY: The proposed settlement agreement would result in termination of investigation No. 337-TA-77. This notice requests comments from the public on the proposed settlement agreement within 30 days of publication of this notice in the Federal Register.

DATES: Comments will be considered if received within 30 days of publication of this notice. Comments should conform with Commission rule 201.8 (19 CFR 201.8), and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202-523-0143.

SUPPLEMENTARY INFORMATION: On August 19, 1980, complainant Precision Handling Devices, Inc., respondents Shinshu Seiki Co. and Epson America, Inc., and the Commission investigative attorney filed a joint motion to terminate the Commission's investigation, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), of alleged unfair methods of competition and unfair acts in the importation and sale of certain computer forms feeding tractors and components. The administrative law judge (ALJ) recommended on September 2, 1980, that the Commission grant the motion to terminate.

This investigation commenced on December 19, 1979, when Precision Handling Devices, Inc. filed a complaint with the Commission, alleging that respondents Shinshu Seiki Co., Ltd., and Epson America, Inc. had violated section 337 of the Tariff Act of 1930. Precision specifically alleged that Shinshu Seiki and Epson America had imported and sold in the United States certain computer forms feeding tractors which infringed claim 5 of U.S. Letters Patent 3,825,162, resulting in substantial injury to an efficiently and economically operated U.S. industry.

On January 15, 1980, the Commission instituted investigation No. 337-TA-77 for the purpose of determining whether section 337 had been violated. Notice of the institution of the investigation was published in the Federal Register on January 30, 1980 (45 F.R. 6867).

Complainant, respondents and the Commission investigative attorney have jointly moved to terminate the investigation, on the grounds that the parties have resolved the dispute by entering into a settlement agreement.

WRITTEN COMMENTS REQUESTED

Because all parties, including the Commission investigative attorney, have joined the motion to terminate, and because the ALJ has recommended the motion be granted, there will be no oral argument regarding the proposed termination of the investigation. However, in order to discharge its statutory obligation to consider the public interest, the Commission seeks written comments from interested persons regarding the effects of terminating this investigation on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers. All written comments must be filed with the Secretary of the Commission no later than 30 days after publication of this notice in the Federal Register. In addition, pursuant to 19 CFR section 210.14(a)(2), the Commission has requested comments from the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Customs Service, on the effects of the proposed settlement agreement.

THE SETTLEMENT AGREEMENT

Complainant Precision Handling Devices and respondents Shinshu Seiki and Epson America entered into the settlement agreement on June 30, 1980. The agreement disposes of all issues pertaining to the alleged infringement of U.S. Letters Patent 3,825,162 by the importation of certain computer forms feeding tractors and components manufactured by Shinshu Seiki and sold in the United States through Epson America. Under the terms of the agreement, respondents, while not admitting the patent's validity or infringement, have agreed to change the design of the disputed tractors to one conceded by complainant to be outside the claims of the patent. Respondents also agreed to pay a sum of money to complainant. The agreement permits respondents to import and sell a limited number of previously manufactured tractors of the type presently under investigation. The precise amount of money paid in the settlement and the maximum number of previously manufactured tractors permitted to be imported are

confidential information subject to a protective order, and are not available to the public.

ADDITIONAL INFORMATION

The original and 19 true copies of all written submissions must be filed with the Secretary of the Commission, 701 E Street NW., Washington, D.C. 20436; 202-523-0161. All comments must be filed no later than 30 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request in camera treatment. Such request should be directed to the Secretary of the Commission and must include a full statement of the reasons the Commission should grant such treatment. The Commission will either accept the submissions in confidence or return it. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

By order of the Commission.

Issued: October 27, 1980.

KENNETH R. MASON,
Secretary.

(TA-131(b)-5, TA-503(a)-7, and 332-113)

Probable Economic Effects of Possible Tariff Reduction Under Section 124 of the Trade Act of 1974 and Designation of Certain Articles as Eligible Articles for Purposes of the Generalized System of Preferences

AGENCY: U.S. International Trade Commission.

ACTION: As a result of a request from the U.S. Trade Representative (USTR) received on September 24, 1980, the Commission has expanded the scope of investigation Nos. TA-131(b)-5, TA-503(a)-7, and 332-113 by the addition of articles classified in the following 15 items of the Tariff Schedules of the United States:

| | | | |
|---------|---------|---------|---------|
| 117. 65 | 176. 29 | 514. 65 | 606. 64 |
| 117. 70 | 176. 30 | 514. 81 | 687. 58 |
| 140. 38 | 437. 30 | 515. 24 | 741. 15 |
| 165. 30 | 514. 61 | 545. 11 | |

With respect to the above items, the USTR has requested advice on the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the reduction of United States duties on these articles by the maximum amount permissible under the authority granted to the President under section 124 of the Trade Act of 1974.

SUPPLEMENTARY INFORMATION: The Commission's initial notice of investigation Nos. TA-131(b)-5, TA-503(a)-7, and 332-113,

containing information on investigation coverage, the public hearing, and related information, was published in the Federal Register of August 27, 1980 (45 F.R. 57221).

SUPPLEMENTAL PUBLIC HEARING

A public hearing in connection with the above 15 additional items being considered in the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on November 18, 1980. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, November 13, 1980.

WRITTEN SUBMISSIONS

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. All written statements, including prepared statements filed by witnesses at the public hearing, should include a summary of material included in the statement. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be insured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than November 26, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: October 29, 1980.

KENNETH R. MASON,
Secretary.

(TA-503(a)-8 and 332-118)

*President's List of Articles Which May Be Designated as Eligible Articles
for Purposes of the Generalized System of Preferences*

AGENCY: U.S. International Trade Commission

ACTION: In accordance with the provisions of section 503(a) and 131(b) of the Trade Act of 1974 (hereinafter referred to as the act)

and section 332(g) of the Tariff Act of 1930, as amended, the Commission has instituted investigation Nos. TA-503(a)-8 and 332-118 for the purpose of obtaining, to the extent practicable, information of the kind described in section 131(d) of the act. This information is for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR) with respect to certain listed articles as to the probable economic effects on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the U.S. generalized system of preferences (GSP), set forth in title V of the act.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: (1) Agricultural products, Mr. Edward Furlow (202-523-0234), Office of Industries; (2) textile products, Mr. Reuben Schwartz, (202-523-0114), Office of Industries; (3) chemical products, Dr. Aimison Jonnard (202-523-0423), Office of Industries; (4) minerals and metals, Mr. Larry Brookhart (202-523-0275), Office of Industries; (5) machinery and equipment, Mr. Aaron Chesser (202-523-0353), Office of Industries; (6) miscellaneous manufacturers, Mr. Walter Trezevant (202-724-1719), Office of Industries; and (7) legal aspects, Mr. William Gearhart, (202-523-0487), Office of the General Counsel. All of the above persons are located at the U.S. International Trade Commission, 701 E Street NW, Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: On October 10, 1980, in accordance with section 503(a) and 131(a) of the act and pursuant to the authority of the President delegated to the USTR by Executive Order 11846, as amended by Executive Order 11947, the USTR furnished the U.S. International Trade Commission a list of items which may be designated as eligible articles for purposes of the GSP (see annex I).

In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limitations specified in section 504(c) of the act.

For TSUS item 687.58, the USTR specifically requested that advice be provided on each statistical annotation of that item.

Section 504(d) of the act exempts from one of the competitive-need limits in section 504(c) articles for which no like or directly competitive article was being produced in the United States on the date of enactment of the act. Accordingly, pursuant to the authority of section 332(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(g)), and in conformity with the delegation of authority from the President to

him of Executive Order 11846 as amended by Executive Order 11947, the USTR requested that the Commission also provide advice with respect to whether products like or directly competitive with any articles contained in the TSUS(A) items in annexes I and II were being produced in the United States on January 3, 1975. A list giving detailed descriptions of the articles contained in the TSUS(A) items identified in annexes I and II is available upon request from the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; 202-523-5178.

The USTR announced the items which have been sent to the Commission for probable effects advice in the October 14, 1980, Federal Register (45 F.R. 67810). The USTR notice includes items in annex I of this notice as well as the following TSUS items being investigated for GSP designation in the Commission's ongoing investigation Nos. TA-131(b)-5, TA-503(a)-7 and 332-113 (announced in Federal Register of Aug. 27, 1980 (45 F.R. 57221)): 112.34, 112.86, 141.78, 148.52, 148.54, 150.05, 161.07, 184.53, 650.47, 687.58, and 727.11. These latter items will not be reexamined in investigations Nos. TA-503(a)-8 and 332-118, the subject of this notice.

PUBLIC HEARING

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on January 13, 1981, to be continued on January 14, 1981, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, January 8, 1981.

WRITTEN SUBMISSIONS

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. All written statements, including prepared statements filed by witnesses at the public hearing, should include a summary of material included in the statement. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for

confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than January 28, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington D.C.

By order of the Commission.

Issued: October 30, 1980.

KENNETH R. MASON,
Secretary.

Attachment.

ANNEX I

ARTICLES BEING CONSIDERED FOR DESIGNATION AS ELIGIBLE ARTICLES
FOR PURPOSES OF THE GSP

| | | | |
|-------------|-------------|-----------|-------------|
| 112. 22(pt) | 148. 24 | 425. 9940 | 687. 5842 |
| 117. 8875 | 169. 13(pt) | (pt) | 687. 5844 |
| 121. 50(pt) | 170. 63 | 472. 12 | 687. 5845 |
| 121. 64 | 182. 49 | 490. 12 | 687. 5847 |
| 135. 61 | 184. 51 | 533. 22 | 687. 5848 |
| 136. 20 | 240. 17 | 533. 64 | 687. 5853 |
| 136. 22 | 240. 17(pt) | 533. 76 | 687. 5854 |
| 137. 10 | 353. 5012 | 533. 78 | 687. 5856 |
| 137. 8782 | 360. 05 | 546. 64 | 687. 5859 |
| (pt) | 361. 2210 | 546. 68 | 687. 5861 |
| 138. 4510 | 361. 2245 | 650. 4920 | 687. 5862 |
| 138. 4570 | 363. 75 | 687. 5810 | 687. 5866 |
| 138. 4570 | 363. 75(pt) | 687. 5811 | 687. 5867 |
| (pt) | 367. 3025 | 687. 5813 | 687. 5868 |
| (sliced | 386. 0430 | 687. 5815 | 687. 5870 |
| bamboo | 386. 0430 | 687. 5817 | 687. 5881 |
| shoots) | (pt) | 687. 5819 | 687. 5883 |
| 138. 4570 | 386. 5040 | 687. 5821 | 687. 5886 |
| (pt) | 386. 5040 | 687. 5823 | 705. 8540 |
| (sliced | (pt) | 687. 5825 | 705. 8540 |
| water | 387. 34 | 687. 5827 | (pt) |
| chestnuts) | 387. 34(pt) | 687. 5831 | 706. 2380 |
| 140. 70 | 411. 60(pt) | 687. 5833 | 706. 2460 |
| 145. 50 | 412. 22 | 687. 5835 | 706. 30(pt) |
| 145. 58(pt) | 412. 22(pt) | 687. 5838 | 706. 6045 |
| 146. 58 | 412. 70(pt) | 687. 5840 | 715. 53(pt) |
| 146. 60 | 425. 9940 | 687. 5841 | |

ANNEX II

ARTICLES BEING CONSIDERED FOR DESIGNATION AS NOT LIKE OR DIRECTLY COMPETITIVE WITH ANY ARTICLE PRODUCED IN THE UNITED STATES ON JANUARY 8, 1975

121.55

121.62

141.70

734.2040(pt)

In the Matter of
CERTAIN MULTICELLULAR PLASTIC FILM } Investigation No. 337-TA-54A

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation to determine whether the process used by Huang Well Industrial Co. Ltd. to manufacture multicellular plastic film abroad would, if practiced in the United States, infringe claims 1 or 2 of U.S. Letters Patent 3,416,984.

AUTHORITY: This investigation is instituted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), 19 U.S.C. 1337a, and paragraph 3 of the Commission order issued on June 29, 1979, in connection with Investigation No. 337-TA-54, Certain Multicellular Plastic Film (USITC Pub. 987, June 1979).

SUPPLEMENTAL INFORMATION: At the conclusion of investigation No. 337-TA-54, the Commission, on June 29, 1979, ordered exclusion of multicellular film manufactured abroad in accordance with the process disclosed by claims 1 and 2 of U.S. Letters Patent 3,416,984 owned by Sealed Air Corp. of Saddle Brook, N.J. Paragraph 3 of the Commission's order provided that persons desiring to import multicellular plastic film into the United States could petition the Commission to institute such further proceedings as would be appropriate in order to determine whether the multicellular plastic film sought to be imported should be allowed entry into the United States.

On October 14, 1980, a petition was filed with the Commission on behalf of Huang Well Industrial Co. Ltd., of Taipei, Taiwan, requesting the Commission to institute further proceedings for the purpose of determining whether the process used by that firm to manufacture multicellular plastic film abroad would, if practiced in the United States, infringe claims 1 or 2 of Sealed Air Corp.'s '984 patent.

Having considered the petition before it, the Commission on October 29, 1980, instituted an investigation to determine whether the process used to manufacture multicellular plastic film abroad by Huang Well Industrial Co. Ltd. would, if practiced in the United States, infringe claims 1 or 2 or U.S. Letters Patent 3,416,984.

PARTIES

For the purpose of the Commission's investigation, the following are named parties upon which this notice of investigation shall be served:

- (1) The petitioner is Huang Well Industrial Co. Ltd., 3 Lane 131, sec. 1 Hang Chow S. Road, Taipei, Taiwan.
- (2) Sealed Air Corp., Park 80 Plaza East, Saddle Brook, N.J. 07662, owner of U.S. Letters Patent 3,416,984 and complainant in the Commission's earlier investigation, is named an interested party upon which the petition and the affidavits attached thereto are to be served.
- (3) A Commission investigative attorney shall be appointed by Mr. Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission.

PRESIDING OFFICER AND RECOMMENDED DETERMINATION

Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate a presiding officer who is directed to issue a recommended determination as soon as feasible, but no later than January 30, 1981. The recommended determination shall be limited to the question of whether the process employed by Huang Well Industrial Co. Ltd. to manufacture multicellular plastic film abroad would, if practiced in the United States, infringe claims 1 or 2 of Sealed Air Corp.'s '984 patent. The burden of proof shall be upon petitioner to show that its process would not, if practiced in the United States, infringe the patent in question.

INVESTIGATION TO BE EXPEDITED

The Commission intends that this investigation be expedited. The Commission plans to issue a final determination in this matter by the close of business on February 27, 1981.

PETITION AVAILABLE FOR PUBLIC INSPECTION

The petition filed on behalf of Huang Well Industrial Co. Ltd. and the two affidavits filed in support thereof are available for inspection by interested persons during official hours (8:45 a.m. to 5:15 p.m.) at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Christine Bliss,
Office of the General Counsel, U.S. International Trade Commission;
202-523-0375.

By order of the Commission.

Issued: October 30, 1980.

KENNETH R. MASON,
Secretary.

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